

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications in)	
the 800 MHz Band)	
)	
Consolidating the 900 MHz Industrial/Land)	WT Docket No. 02-55
Transportation and Business Pool Channels)	
)	
)	

COMMENTS OF THE CITY OF NEW YORK

INTRODUCTION

The City of New York (“City”) hereby submits the foregoing comments in response to the January 3, 2003 Public Notice of the Federal Communications Commission (“Commission”) requesting comments on the “Supplemental Comments of the Consensus Parties” (“Supplemental Comments”).¹ As elaborated on below, the City conditionally endorses the Consensus Plan,² subject to the following clarifications and conditions:

¹ See Supplemental Comments of the Consensus Parties, WT Docket No. 02-55 (December 2002) (“Supplemental Comments”). The Supplemental Comments was submitted in the proceeding on *Improving Public Safety Communications in the 800 MHz Band and Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, FCC No. 02-81, Notice of Proposed Rulemaking (rel. Mar. 14, 2002), by Aeronautical Radio, Inc., the American Mobile Telecommunications Association, the American Petroleum Institute, the Association of American Railroads, the Association of Public Safety Communications Officials – International, Forest Industries Telecommunications, the Industrial Telecommunications Association, Inc., the International Association of Chiefs of Police, the International Association of Fire Chiefs, the International Municipal Signal Association, the Major Cities Chiefs Association, the Major County Sheriffs Association, the National Sheriffs Association, Nextel Communications, Inc., the Personal Communications Industry Association, the Taxicab, Limousine and Paratransit Association and the National Stone, Sand and Gravel Association (“Consensus Parties”).

² See Comments of the Consensus Parties, WT Docket No. 02-55.

1. An unambiguous statement that the City and similarly situated “guard band incumbents” are among the class of public safety licensees that are entitled to have their relocation costs fully reimbursed by the proposed Relocation Fund;
2. Additional, contingency funding to cover public safety relocation costs in case the \$700 million that is now dedicated to public safety relocation is depleted after the Consensus Plan has been approved and relocation begun; and
3. A restructuring of the Relocation Coordination Committee (“RCC”), or any similar entity, such that its membership is weighted in favor of public safety and no individual licensee is a committee member.

BACKGROUND

As noted in New York City’s prior Comments and Reply Comments in this proceeding, the City makes critical use of its 800 MHz frequency allocation to support its public safety obligations. Thus, for example, the City’s Department of Information Technology and Telecommunications supports an interoperable system utilized by approximately 40 agencies citywide, including the City’s Fire Department (“FDNY”), Emergency Medical Services (“EMS”) and Office of Emergency Management, to coordinate communications in extraordinary circumstances such as blizzards, gas main explosions, hazardous materials incidents, plane crashes and terrorist threats. On a daily basis, the City’s 800 MHz band allocation also supports citywide operations and lifesaving data, telemetry and dispatch communications by the FDNY and EMS.

As has also been noted, the City operates trunked voice and mobile data public safety systems in the 809-816/854-859 MHz band. Forty percent of this band allocation is in the 814-816/859-861 MHz frequency range, which the Consensus Plan has proposed for

conversion into a guard band. The City's 814-816/859-861 MHz frequencies support the above noted critical functions. As will be further discussed, guard band incumbents should be entitled to protections against interference from the proposed in-band "campus-type" systems and adjacent cellular block licensees equivalent to the protections that are contemplated for public safety licensees in the proposed 809-814/854-858 MHz non-cellular block. Absent such guarantees, the City will have no real choice but to exercise its Consensus Plan "option" to relocate to the proposed non-cellular block.

DISCUSSION

The City's concerns and comments throughout this proceeding have focused on securing adequate funding for public safety relocation, guaranteeing the continuity of public safety communications and resolving public safety interference through a combination of contiguous spectrum and complementary equipment and operational standards. In addition, the City continues to believe that there is a vital need for the allocation of additional 800 MHz public safety spectrum.³ Regrettably, the promise of such additional spectrum appears to have been taken off the table since the original "Nextel Proposal."⁴

³ As noted in the City's initial comments, "With approximately 8,000 radios currently operating over 15 channels, [the 800 City's 800 MHz] public safety system considerably exceeds the FCC's recommended loading criteria of 100 radios per channel. Moreover, in the wake of September 11, the City has realized pressing new public safety communications needs. A "sampling" of these needs includes distributing radios to approximately 1,200 public schools, and 20 colleges and universities in the event of another crisis. The City has also distributed more than 100 new radios to hospitals in the Health and Hospitals Corporation and Greater New York Hospital systems, providing each with its own talk group and connectivity to OEM's ALERT channel. Moreover, to compensate for its loss of facilities at the World Trade Center, the City will distribute over 200 radios to the New York City Housing Authority." (Cites omitted.)

⁴ *Promoting Public Safety Communications: Realigning the 800 MHz Land Mobile Radio Band to Rectify Commercial Mobile Radio-Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety*), Nov. 21, 2001

Particularly given the late availability date of new 700 MHz public safety spectrum, this could have serious operational consequences.

Funding

In commenting on the original Consensus Plan, New York City stated that “[t]he City has consistently made clear that its endorsement of any proposal depends on the identification of appropriate external sources to fully fund relocation and all other costs associated with implementing such plan.”⁵ By promising additional funds⁶ and setting forth a considered framework for their dispersal, the Supplemental Comments eases the City’s concerns, but only partially. As a threshold matter, the City requires an explicit statement that it is among the class of public safety licensees that are entitled to have their relocation costs covered by the Relocation Fund described in the Supplemental Comments.⁷ The Supplemental Comments states that incumbent public safety licensees in the proposed 814-816/859-61 MHz guard band would “have the option of relocating” to the 809-814/854-859 non-cellular block.⁸ In several instances, however, the Supplemental Comments contains statements to the effect that “Nextel has agreed to pay up to \$850 million for the relocation expenses of incumbents required to relocate to carry out 800 MHz realignment consistent with the Consensus Plan”⁹; and that “Nextel is committing funds sufficient to implement and complete the relocations required by the Consensus Plan.”¹⁰ Clarification that the guard band incumbents are entitled to full funding for

⁵ See Comments of the City of New York, WT Docket No. 02-55 at 5 (September 2002).

⁶ The City, here, withholds comment on the adequacy and appropriateness of the proposed escrow-based funding mechanism.

⁷ See Supplemental Comments at 5.

⁸ *Id.* at 14 (emphasis added).

⁹ *Id.* at 7 (emphasis added).

¹⁰ *Id.* at 12 (emphasis added).

relocation, notwithstanding the fact that relocation by the City and other public safety entities in the proposed guard band is deemed optional, is an absolute precondition to the City's endorsement of the Consensus Plan.

While New York City also commends the well-documented survey of potential costs in the Supplemental Comments, the City remains troubled by the fact that no provision has been made for additional funding in the event that the \$700 million that is now dedicated for public safety relocation runs out after the Consensus Plan has been approved and relocation begun. The Supplemental Comments itself notes that while the Public Safety Organizations associated with the Consensus Plan believe the revised funding amount is reasonable, their assessment is “subject to several significant variables.”¹¹ In particular, the Supplemental Comments admits that small variations in the total number of radios that need to be replaced “will have a significant impact on the total cost.”¹² Given that the cost for public safety relocation is estimated in the Supplemental Comments to exceed \$698 million¹³, even the slightest cost overrun would break the fund. This is a vulnerable position in which to place public safety licensees in the event that the Commission were to approve the Consensus Plan. (In this context, it is worth noting that despite the City's 800 MHz infrastructure, a “consultation visit” was not made here in developing the cost estimate.)

Nor does the City agree with the assertion in the Supplemental Comments that any uncertainty regarding the adequacy of funding “is mitigated, however, by two factors in

¹¹ *Id.* at 11.

¹² *Id.* City, which was not consulted, has a lot of radios (i.e., far more than the 167 per discrete frequency).

the Consensus Plan: (1) the basic requirement that no public safety licensee will be required to move without full compensation, and (2) the requirement that funding be secured to move an entire NPSPAC Region before any moves are initiated in that region.”¹⁴ In fact, these supposed assurances serve mainly to raise new concerns. In the City’s case, for example, what are the implications of stating that relocation out of the proposed guard band would not be required without full compensation? The statement could, unacceptably, suggest that the City would be “entitled” to continue operating in the guard band despite the potential for new sources of interference there. Moreover, how (and by whom) is “full compensation” to be determined? The Plan suggests that Nextel and, ultimately, the proposed RCC, rather than the relocating licensee or a truly neutral entity, would define full compensation. However, as described below, the City has considerable concerns about the scope of responsibility and composition of the RCC.

Continuity

New York City requires an “airtight” assurance that public safety systems will remain 100 percent operational during the relocation process to endorse the Consensus Plan. Here too, some of the City’s concerns have been addressed in the Supplemental Comments. In particular, the City supports the proposal that guard band incumbents be given the right to relocate to the non-cellular block during the same period as NPSPAC relocation.¹⁵ Ultimately, however, the entity overseeing the operational aspects of relocation could determine its success or failure. The City holds strongly that this responsibility, with its potentially decisive implications for public safety, should not be

¹³ Supplemental Comments at A-8.

¹⁴ *Id.* at 7.

left to the RCC as proposed. As envisioned in the Supplemental Comments, the RCC would have considerable authority over not only the funding of relocation, but over its critical operational details of public safety relocation. Thus, in addition to its role as the final arbitrator in funding disputes, the RCC would “carry out certain frequency designation and coordination, dispute resolution and licensing application responsibilities during the realignment process.”¹⁶ The RCC would have absolute responsibility to “oversee the realignment process generally, and through constituent committees, develop and certify to the Commission the relocation plans.”¹⁷ According to the Supplemental Comments, the RCC would be comprised of Nextel as well as two private wireless members and two public safety members of the Land Mobile Communications Council. As noted, the City could only support authorizing an RCC-like entity for the purposes described in the Supplemental Comments if its membership was weighted in favor of public safety and if no individual licensee was permitted to be a committee member.

Interference

Finally, the City is very concerned that it would continue to be vulnerable to interference if it were to remain in the guard band as currently proposed. The City believes that public safety licensees in the proposed guard band are entitled to the same level of protection against interference that is contemplated for public safety licensees in the proposed 809-814/854-858 MHz non-cellular block. Neither the proposed requirement that operation by Business Industrial/Land Transportation and high-site SMR licensees be limited to high-site, wide-area systems, nor the signal strength requirements for operation in the band,

¹⁵ *Id.* at 31.

¹⁶ *Id.* at 15.

provide adequate protection against the type of intra-band interference the City and other public safety systems now experience. Thus, for example, the Supplemental Comments do not touch upon modulation requirements for the guard band. Moreover, guard band incumbents could also be subjected to interference from licensees in the adjacent cellular block. Indeed, as the Supplemental Comments itself starkly states, “[p]ublic safety licensees electing to remain in the Guard Band are deemed to accept certain interference from licensees in the Cellular Block lawfully operating within the parameters of their licenses.”¹⁸

The City has been experienced considerable interference from private cellular providers. Given the City’s extensive use of the 800 MHz frequency, and its critical role in “routine” public safety-related response as well as potentially extraordinary crisis situations, a zero-tolerance approach to interference is required. Neither the City’s first responders, nor the public that relies on the system, should be subject to an unreliable public safety infrastructure resulting from unpredictable and often crippling interference. The City and other public safety licensees are the victims of this problem. Indeed, any rebanding solution will inevitably impose non-quantifiable burdens on public safety entities. Consequently, at the conclusion of the proceedings, the problem of interference to public safety operations must be substantially, and not just marginally, rectified.

CONCLUSION

¹⁷ *Id.*

¹⁸ *Id.* at C-1.

New York City applauds the work of the Commission and the Consensus parties, which, we believe, has brought us within reach of a fair and, above all, safe plan. The City agrees that contiguous public safety spectrum in the 800 MHz frequency range must be at the heart of any such plan. The Consensus Plan, as further developed in the Supplemental Comments, holds out the prospect of a resolution in as swift and orderly a manner as might be hoped for given the logistical complexities, the legitimate, competing interests and the costs involved. At the same time, as described above, the City believes the Consensus Plan requires further study and fine-tuning. The Commission should not adopt it as proposed; but, having helped bring the process this far along, the Consensus parties should resist taking an all-or-nothing posture.

Respectfully submitted,

/s/ _____

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